October 30, 2018

IB Docket 15-126

Thomas Sullivan
Chief, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: JPMorgan Chase & Co.

Dear Mr. Sullivan:

JPMorgan Chase & Co. ("JPMC" or the "Firm"), by its attorneys and pursuant to the *Memorandum Opinion and Order and Declaratory Ruling* in IB Docket No. 15-126,[1] by which the Federal Communications Commission ("FCC" or "Commission") granted its consent to the applications enabling LightSquared Subsidiary LLC, Debtor-in-Possession (and certain affiliated entities) ("LightSquared") to emerge from bankruptcy, hereby requests that the Commission find that JPMC has the requisite character to hold interests in FCC licensed entities, including in New LightSquared. In the *LightSquared Order*, the emerging company was called "New LightSquared," and is now known as Ligado Networks, LLC. For purposes of this filing, the company will be referred to as "Ligado."

I. INTRODUCTION AND BACKGROUND

JPMC, a widely traded, publicly held company, is a leading global financial services firm and is one of the largest banking institutions in the United States, with operations worldwide. JPMC is a leader in investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing, and asset management. JPMC, which has more than 250,000 employees globally, serves millions of customers in the United States and many of the world's most prominent corporate, institutional and government clients under its J.P. Morgan and Chase brands.[2]

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[1] In the Matter of Applications of LightSquared Subsidiary LLC, Debtor-In-Possession, and LightSquared Subsidiary LLC, for Consent to Assign and Transfer Licenses and Other Authorizations and Request for Declaratory Ruling on Foreign Ownership, *Memorandum Opinion and Order and Declaratory Ruling*, 30 FCC Rcd 13988 (2015) (the "LightSquared Order").

[2] *See 2017 Annual Report, JPMorgan Chase & Co.*, available at https://www.jpmorganchase.com/corporate/investor-relations/document/annualreport-2017.pdf.

As detailed in the *LightSquared Order*, during the course of the Commission's consideration of the emergence applications, JPMC notified the Commission that the Firm had entered into a Plea Agreement with the United States Department of Justice ("DOJ"), pursuant to which JPMC pled guilty to a single antitrust charge and agreed to pay a $550 million fine and a three-year period of probation.[3] Because of LightSquared's need to emerge from bankruptcy, the then-pending status of the plea, and other "unique circumstances," the FCC determined that the agency did not have sufficient information or time to assess JPMC's character qualifications in the context of the LightSquared bankruptcy proceeding.[4] As a result, JPMC agreed, as an interim measure, to hold its interest in Ligado pursuant to a Proxy Agreement, prohibiting the Firm from having any involvement in the management or operation of Ligado, until such time as the Commission finds "that JPMorgan possesses the requisite qualifications, including those of character, to hold its [Ligado] interest without such restrictions . . . or otherwise with the Commission's approval."[5]

As contemplated by the *LightSquared Order*, on January 5, 2017, the U.S. District Court for the District of Connecticut (the "District Court") accepted JPMC's guilty plea (the "Court Action").[6] Under the terms of the *LightSquared Order*, JPMC is required to "make a filing with the Commission stating, in light of that Court Action, under what terms JPMorgan proposes to hold its interest in New LightSquared and provide the Commission with information that JPMorgan believes to be relevant to a determination by the Commission, applying as guidance its *1986 Character Policy Statement* and *1990 Character Policy Statement* and pertinent precedent, of whether JPMorgan has the requisite character to hold its interest in New LightSquared."[7] As demonstrated more fully below, JPMC respectfully requests that the Commission find that the Firm possesses the qualifications to hold attributable interests in Ligado and other FCC licensees and to allow the Proxy Agreement to terminate by its terms.

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[3] Letter from Wayne D. Johnsen, Counsel for JPMC, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 15-126, at 1 (filed July 1, 2015); *see also* Plea Agreement, *United States v. JPMorgan Chase & Co.*, Criminal No. 3:15-CR-79 (SRU) (D. Conn. May 20, 2015) ("Plea Agreement"), available at http://www.justice.gov/file/440491/download (also attached as Exhibit 1). JPMC entered a guilty plea to a one-count violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

[4] *LightSquared Order*, *supra* at para. 15.

[5] *LightSquared Order*, *supra* at para. 17.

[6] Letter from Wayne D. Johnsen, Counsel for JPMC, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 15-126, at 1 (filed Jan. 13, 2017).

[7] *LightSquared Order* at para 18. Under the terms of the *LightSquared Order*, that filing is to be made as soon "as is reasonably practicable in light of the status of then-pending judicial or other governmental proceedings, including enforcement actions, related to JPMorgan's trading activities in the foreign currency exchange market, but in no event more than three (3) years after the Court Action." *Id.*

As detailed in the May 20, 2015 Plea Agreement and the DOJ's subsequently filed December 1, 2016 Sentencing Memorandum and Motion for Departure (the "*Sentencing Memorandum*"),[8] JPMC's participation in the antitrust conspiracy was "through one of its EUR/USD traders" in the foreign currency exchange spot market (the "FX Spot Market")[9] who "communicated on a near-daily basis with traders employed by [other entities involved in the conspiracy] in an electronic chat room."[10] Although the conspiracy described in the Plea Agreement began as early as December 2007, JPMC did not participate in the conspiracy until hiring this trader in July 2010—nearly three years after the conspiracy had begun elsewhere.[11]

As detailed in the *Sentencing Memorandum*, the conduct involving the FX Spot Market "was limited to a small part of [JPMC's] operations," and the trader involved in the conduct, "while invested with significant responsibility in connection with [JPMC's] role as a dealer in the FX Spot Market, was not a member of [JPMC's] senior management."[12] Moreover, the individual responsible for the offense is no longer employed by JPMC.[13] At sentencing, the District Court characterized the activities of the JPMC trader and those traders at other banks involved in the conspiracy as "rogue behavior" and concluded JPMC did not "appear to have condoned conduct at any high-ranking level."[14]

Indeed, when the Firm became aware of the former trader's misconduct, JPMC "was both extremely helpful and extremely prompt in cooperating with the government's investigation" and dedicated a "significant amount of resources" to the investigation.[15] In the *Sentencing Memorandum*, the DOJ praised the "timely, useful and substantial assistance" that JPMC

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8 The *Sentencing Memorandum* is attached as Exhibit 2.

9 *Plea Agreement* at 5. The former JPMC trader who participated in the conspiracy described in the Plea Agreement has been separately indicted in the matter *United States v. Usher et al.*, 1:17-CR-00019 (RMB (S.D.N.Y.). Trial currently is scheduled to begin in October 2018.

10 *Sentencing Memorandum* at 2.

11 *Sentencing Memorandum* at 2.

12 *Sentencing Memorandum* at 8.

13 *Sentencing Memorandum* at 10.

14 *United States of America v. Barclays PLC; Citicorp; JP Morgan Chase & Co.; The Royal Bank of Scotland PLC*, Criminal Nos. 3:15-CR-00077-80 (SRU) (D. Conn.. Jan. 5, 2017), Sentencings at 29-30 ("*Sentencing Transcript*"), attached as Exhibit 3.

15 *Sentencing Transcript* at 24-25.

provided during its investigation,[16] which the District Court echoed in describing JPMC's response as "commendable."[17]

In addition, the DOJ emphasized that JPMC both "has accepted responsibility and has taken significant steps to remedy the conduct."[18] Indeed, prior to sentencing, the DOJ informed the District Court that JPMC's "unequivocal acceptance of responsibly [sic] for its conduct promotes a respect for law and serves as a positive example for others."[19] Further, the DOJ highlighted that JPMC has taken significant internal steps to prevent such conduct and strengthen the Firm's compliance and controls surrounding FX trading activities.[20]

II. THE *CHARACTER POLICY STATEMENT* AND COMMISSION PRECEDENT CONFIRM THAT JPMC SHOULD BE FOUND QUALIFIED TO HOLD AND INVEST IN FCC LICENSES.

The FCC's *Character Policy Statement* establishes the types of conduct significant enough to require Commission review of an applicant's character.[21] In the case of a felony conviction, the Commission's inquiry focuses on the violator's ability to comply with the law generally, which bears on its propensity to deal truthfully with the Commission and comply with its rules.[22] But the Commission's policy is "not automatically to disqualify a license holder or applicant who commits a felony, but rather to consider the felony as a relevant factor in evaluating propensity to obey the law."[23] In evaluating felonies perpetrated by a company's employee, the Commission regularly considers factors like the relationship between the offending business and the FCC-related business; whether the misconduct involves the business's management; whether the violation involves communications-related misconduct; remedial actions the company takes

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16 *Sentencing Memorandum* at 11-14.

17 *Sentencing Transcript* at 26.

18 *Sentencing Memorandum* at 8.

19 *Sentencing Memorandum* at 9.

20 *Sentencing Memorandum* at 9.

21 *Policy Regarding Character Qualifications in Broadcast Licensing,* Report, Order and Policy Statement, 102 FCC 2d 1179, ¶ 60 (1986) ("*1986 Character Policy Statement*"), *modified,* Policy Statement and Order, 5 FCC Rcd 3252 (1990) ("*1990 Character Policy Statement*"), *recon. granted in part,* Memorandum Opinion and Order, 6 FCC Rcd 3488 (1991) ("*1991 Character Policy Statement*"), *modified in part,* Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992) ("*1992 Character Policy Statement*" and collectively, the "*Character Policy Statement*").

22 *1986 Character Policy Statement* at ¶ 7.

23 *Contemporary Media, Inc. v. FCC,* 214 F.3d 187, 193 (D.C. Cir. 2000).

after discovering the misconduct; and the company's history of compliance with FCC rules and policies.[24] The Commission considers and weighs these factors on a case-by-case basis.[25] As discussed more fully below, JPMC submits that the factors in this case support a finding that JPMC is qualified to hold interests in Commission licenses.

A. The FX Spot Market trader's misconduct was wholly unrelated to the Firm's FCC interests.

The Commission's policies and precedent contemplate situations in which misconduct occurs in a part of an enterprise that is separate from an FCC interest-holding business. The *Character Policy Statement* explicitly considers a situation where, like here, the misconduct occurs in a large corporate entity with diversified holdings and is wholly separate from the corporation's FCC interests. In such a case, the *Character Policy Statement* provides that the Commission will consider the misconduct only if (1) there is a close ongoing relationship between the business where the misconduct occurred and the FCC interest-holding business; (2) the two have common principals; and (3) the common principals are "actively involved" in the "day-to-day operations of the FCC interest-holding business."[26] Commission precedent clarifies that, absent the above conditions, an FCC interest-holding business should not be tainted by a separate business's misconduct.[27]

In January 2011, JPMC subsidiary SIG Holdings, Inc. ("SIG"), acquired shares of LightSquared Inc.'s Convertible Series B Preferred Stock.[28] In May 2012, LightSquared filed for bankruptcy

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24 *1986 Character Policy Statement* at ¶ 78.

25 *Id.*

26 *Id.* at ¶ 79.

27 *In re Application of Westinghouse Broad. Co., Inc. for Renewal of License for Station KPIX San Francisco, California*, 75 FCC 2d 736, ¶ 3 (1980) ("*Westinghouse II*"). In *Westinghouse II*, a parent company pleaded guilty to making "false, fictitious, and fraudulent material statements and representations of fact" in forms filed with two United States agencies. *Id.* The company's FCC interest-holding subsidiary argued that the misconduct was completely separate from its operations and thus had no bearing on its qualification to hold FCC licenses. While noting that criminal misrepresentations to federal agencies was "a matter of substantial significance in considering a licensee's character qualifications," the Commission still found the subsidiary qualified because the parent acted in good faith and the misconduct was unrelated to the subsidiary's business. *Id.* at. ¶¶ 5-6. The subsidiary argued that no subsidiary official was charged with criminal misconduct; the misconduct occurred in an area of the parent's operations that was completely separate and apart from the subsidiary's operations; no subsidiary officer, director, or employee was involved in the matter; and none of the persons named in the government's Offer of Proof had any relation to, or connection with, the subsidiary's operation. The Commission agreed that the businesses were sufficiently separate and thus did "not believe that the facts before [it] raise[d] questions concerning [the subsidiary's] qualifications to remain a Commission licensee." *Id.* at ¶ 7.

28 JPMC, through certain of its affiliates also was a lender in LightSquared's pre-petition bank debt.

and, as a debtor-in-possession, became subject to the control of the bankruptcy court until emergence. As set forth in the applications, since Ligado's emergence from bankruptcy, JPMC's interest in Ligado has been held by RL2 Investors Holdings, LLC, a Delaware limited liability company ("RL2 Holdings") and an indirect, wholly owned subsidiary of JPMC.[29]

As discussed above, the employee involved in the conspiracy worked for JPMC as a EUR/USD trader in the FX Spot Market business and was based in London.[30] Specifically, the trader was employed by two UK subsidiaries of JPMC between July 2010 and October 2013—J.P. Morgan Europe Ltd. ("JPMEL") from July 2010 to May 25, 2011 and J.P. Morgan Limited ("JPML") from May 25, 2011 to October 1, 2013. The trader was also seconded to the London Branch of JPMorgan Chase Bank, N.A. during a portion of that period and employed by the London Branch for approximately two weeks before he was placed on leave. The individual was placed on leave and removed from the desk in October 2013. He was formally suspended on January 15, 2014 and terminated effective October 6, 2014. Not only were the JPMC trader's responsibilities unrelated to the Firm's interests in Ligado or other FCC regulated businesses, but, as noted, the "individual responsible for the offense" is no longer employed by JPMC, with his separation occurring before the LightSquared emergence applications were even filed.[31] By contrast, both the individuals responsible for the interests in Ligado, and the individual who supervises such individuals, have resided in JPMC's offices in the United States and were not part of the FX Spot Market business or involved in the EUR/USD conspiracy described in the Plea Agreement. In sum, there was no close ongoing relationship between the business where the misconduct occurred and the FCC interest-holding business, there were no common principals actively involved in the day-to-day operations of the FCC interest-holding business and the business where the misconduct occurred, and those "actively involved" in the "day-to-day

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[29] *See, e.g.*, Supplement to Petition of LightSquared Subsidiary LLC for Determination of the Public Interest Under Section 310(B)(4) of the Communications Act of 1934, As Amended, IB File No. ISP-PDR-20150406-00002, In the Matter of LightSquared Subsidiary LLC, Debtor-in-Possession, Assignor and LightSquared Subsidiary LLC, Assignee, Consolidated Applications for Consent to Assign Blanket Domestic and International Section 214 Authority, ITC-ASG-20150406-00084, IB Docket No. 15-126 (filed Sep. 9, 2015), at 2-3, Chart C-2. At the time of emergence, RL2 Holdings was owned by RL2 Inc., a Delaware corporation, which, in turn, was owned by SIG. Subsequent to Ligado's emergence from bankruptcy, as part of an internal reorganization of certain legal entities, SIG merged downstream with RL2 Inc., and RL2 Inc. merged with and into JPMorgan Broker-Dealer Holdings, Inc., a Delaware corporation ("JPMBDH"). JPMC transferred all of its interest in JPMBDH to JPMorgan Chase Holdings LLC, a Delaware limited liability company ("JPMCH LLC") and a wholly owned subsidiary of JPMC, such that JPMCH LLC sits in the chain of ownership between JPMC and JPMBDH.

[30] *See supra* notes 8-14 and accompanying text. As discussed therein, JPMC's participation in the conspiracy described in the Plea Agreement was "through one of its EUR/USD traders," and the conduct was "limited to a small part of [JPMC's] operations," with the District Court describing the conduct as "rogue behavior," and concluding the Firm did not "appear to have condoned conduct at any high-ranking level."

[31] *See Sentencing Memorandum* at 10.

operations of the FCC interest-holding business" were not in any way involved in the EUR/USD conspiracy described in the Plea Agreement. Moreover, like in *Westinghouse II*, no employees involved with JPMC's interest in Ligado have been charged in connection with the EUR/USD conspiracy described in the Plea Agreement.

B. JPMC has taken significant remedial action since discovering the misconduct.

Since first discovering the trader's misconduct, JPMC has undertaken extensive remedial and compliance efforts. The FCC has long emphasized the importance of remedial action when considering an applicant's qualification to hold interests in FCC licenses, particularly when those remedial actions are undertaken in connection with other "government bodies with ... authority and expertise" concerning the conduct at issue.[32]

Under the terms of the Plea Agreement, JPMC is required, among other things to (i) implement and continue to implement a compliance program designed to prevent and detect the types of conduct as set forth in the Plea Agreement, and (ii) further strengthen its compliance and internal controls as required by the U.S. Commodity Futures Trading Commission, the United Kingdom Financial Conduct Authority, and any other regulatory or enforcement agencies that have addressed the conduct set forth in the Plea Agreement.[33] JPMC has implemented, and is continuing to implement, such remedial measures, and is committed to ensuring that it is in compliance with the obligations set forth in the Plea Agreement.[34]

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[32] *See, e.g.*, *WPIX, Inc.*, 5 FCC Rcd 7469 (1990) (holding that "the corrective actions or sanctions that have been delivered against WPIX, by the government bodies with such authority and expertise, appear to be sufficient"); *Lockheed Martin Corporation*, 17 FCC Rcd 13160 (2002) (recognizing "the Plea Agreement also provides EMS to undertake remedial actions with the company to prevent further misconduct"); *General Electric Co.*, 45 FCC 1592 (1964); *Westinghouse Broadcasting Co.*, 44 FCC 2778 (1962).

[33] *Plea Agreement* at 11; *see also* Letter from Wayne D. Johnsen to Marlene H. Dortch, IB Docket No. 15-126 (filed Oct. 6, 2015), at Exhibit A, describing FX remedial measures required of JPMC.

[34] In addition to the remedial and other obligations set forth in the Plea Agreement, JPMC has sought and received certain waivers needed in connection with the Plea Agreement and subsequent sentencing that permit JPMC to continue to do business. On May 20 and June 16, 2015, the U.S. Securities and Exchange Commission granted waivers regarding: (i) Well Known Seasoned Issuer ("WKSI") qualification, Securities Act of 1933; (ii) Safe Harbor Protection, Private Securities Litigation Reform Act of 1995; and (iii) Section 9(a) of the Investment Company Act, 15 U.S.C. § 80a-9(a). *See In the Matter of JPMorgan Chase & Co.*, Securities Act Release No. 9780 (May 20, 2015) (WKSI waiver); *In the Matter of JPMorgan Chase & Co.*, Securities Act Release No. 9785 (May 20, 2015) (Safe Harbor waiver); *In the Matter of JPMorgan Chase & Co., et al.*, Investment Company Act Release No. IC-31613 (May 20, 2015) (Investment Company Act temporary exemption); *In the Matter of JPMorgan Chase & Co., et al.*, Investment Company Act Release No. 31674 (June 16, 2015) (Investment Company Act permanent exemption). In addition, on December 29, 2017, the Department of Labor ("DOL") granted JPMC a five-year exemption of disqualification that allows JPMC and its affiliates to continue to rely on the Qualified Professional Asset Manager exemption under the Employee Retirement Income Security Act ("ERISA") until January 2023.

In furtherance of its obligations under the Plea Agreement and sentencing, JPMC has made substantial improvements to its compliance program, undertaking broad efforts to enhance business practices and reduce potential conduct issues, including a "Culture and Conduct" initiative and the development of enhanced sales and trading guidelines.[35] The Firm also has implemented new controls designed to prevent recurrence of the offense, including new limitations on and increased surveillance of employees.[36] The DOJ commended JPMC for its efforts, commenting that "these measures are a significant step by [JPMC] designed to protect against similar conduct in the future."[37] The Firm remains in good standing with the remediation obligations set out in various government resolutions, with the DOJ applauding JPMC's "broad initiatives to enhance business practices to reduce potential conduct issues."[38]

JPMC's remediation efforts are executed over the Firm's wholesale principal trading businesses, focusing on senior management oversight, the internal controls and compliance program (which is subject to periodic testing through the annual controls review as well as other assessments), the compliance risk management program, and internal audit. The remediation action plan that JPMC has designed and implemented includes:

JPMC will need to reapply in due course for a further exemption to cover the remainder of the ten-year disqualification period. 82 Fed. Reg. 61816 (Dec. 29, 2017). As noted in the Plea Agreement, the DOJ agreed to support a request by JPMC that sentencing by the District Court be adjourned until after the DOL ruled on JPMC's waiver request, and the District Court withheld sentencing until after JPMC's receipt of the DOL waiver. *See* Plea Agreement at 13-14.

35 *Sentencing Memorandum* at 9.

36 *Sentencing Memorandum* at 9.

37 *Sentencing Memorandum* at 9.

38 *Id.*

- improvements to senior management oversight, incorporating periodic reassessment of risks, enhancements to the supervision and governance structure, and monitoring of compliance with the remedial efforts,

- internal controls and compliance program measures that include enhancements to policies and procedures and preventive and detective controls (including monitoring and surveillance), further defining management responsibilities, and promoting a compliance testing program to test internal controls,

- a variety of risk assessments, including those done annually as well as prior to commencing new business initiatives, in each case designed to enhance the Firm's compliance risk management program,

- annual control reviews of relevant policies, procedures, and other key controls, with subsequent action items to address any identified gaps implemented by the Firm, and

- an internal audit plan that includes enhanced escalation procedures, as well as periodic internal audits of business line controls and compliance detection and monitoring processes.

As discussed above, the Firm's significant remediation also has been coupled with JPMC's extensive cooperation with the DOJ's FX Spot Market inquiries. The DOJ praised the "timely, useful and substantial assistance" that the company provided during its investigation of the FX Spot Market.[39] The court added that "there was a significant amount of resources that were committed to that effort that saved the government a tremendous amount of hard work."[40]

JPMC's willing and substantial cooperation with government inquiries and the Firm's own internal remedial actions are precisely the type of measures that the FCC has previously considered in determining a company's qualification to hold licenses. We ask that the Commission consider these extensive and proactive remedial actions, as it has done in the past.

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[39] *See supra notes* 15-20 and accompanying text. As noted, the District Court also complimented JPMC's response to the DOJ as "commendable" and said that the company was "extremely helpful and extremely prompt in cooperating with the government's investigation." Similarly, throughout the *Sentencing Memorandum*, the DOJ described JPMC's assistance as "valuable," "significant and useful," "timely and extensive," and "comprehensive, useful, and timely." *Sentencing Memorandum* at 12-14.

[40] *Sentencing Transcript* at 24-25.

C. JPMC has a proven history of compliance with FCC rules and policies.

The FCC also considers an applicant's or licensee's prior history of compliance when making a character determination.[41] In the *1986 Character Policy Statement*, the Commission noted that "an applicant's record of compliance with our rules and policies, if any, should ordinarily be taken into account" in qualification determinations.[42] JPMC has invested in the telecommunications industry for years and has a demonstrated history of compliance. These investments, including its Ligado holdings, have helped to promote innovative technologies that serve the public interest by expanding the availability and quality of communications services. A discussion of JPMC's history of compliance is set forth in Appendix A.

III. CONCLUSION

As set forth above, under the *Lightsquared Order*, JPMC is required to seek resolution of the Proxy Agreement as soon as reasonably practicable in light of the status of judicial or other governmental proceedings related to JPMC's trading activities in the FX market, and in no event no more than three years after the January 5, 2017 JPMC sentencing. Although satisfaction of its probation under the Plea Agreement and sentencing is not a requirement under the *LightSquared* Order, JPMC recognizes that it is making this request before the three-year term of probation expires. In order to provide the agency with additional comfort, should the sentencing court adjudicate that JPMC is in breach of any term of probation prior to the January 5, 2020 conclusion of the probation period, JPMC will provide the FCC with notice of any such adjudication within fifteen (15) days of the court's decision.

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41 *See, e.g., Lockheed Martin Corporation*, 17 FCC Rcd 13160 (2002) (finding applicant qualified to remain FCC licensee where "no other credible information has been provided . . . to detract from [applicant's] record of compliance with FCC rules and policies"); *General Electric Co.*, 45 FCC 1592 (1964) (recognizing licensee's "consistent record of meritorious broadcast service to the public" in character determination); *Westinghouse Broadcasting Co.*, 44 FCC 2778 (1962) (recognizing "superior and uncommon nature of [licensee's] broadcast record").

42 *1986 Character Policy Statement* at ¶ 102.

For the reasons stated above, JPMC asks the Commission to find that the Firm possesses the qualifications to hold attributable interests in Ligado and other FCC licensees and to allow the Proxy Agreement to terminate by its terms.

Best Regards,

Richard E. Wiley

Richard E. Wiley
Wayne D. Johnsen
Scott D. Delacourt
Counsel to JPMorgan Chase & Co.

cc: Thomas Johnson

APPENDIX A

JPMorgan Chase & Co. ("JPMC") has a past record of compliance with the Federal Communications Commission ("FCC") rules and policies.[43] As an initial note, JPMC is one of America's leading and most reputable banks with a more than 200-year history of delivering value to clients. The company holds a broad and diverse portfolio of both domestic and foreign assets. That portfolio has encompassed, at different times, substantial assets in the U.S. communications market, including interests in communications firms that are well-known to the FCC, such as Tribune Company ("Tribune"), Open Range Communications, Inc. ("Open Range"), and Teligent, Inc. ("Teligent"), among many others.

Specifically, over the course of the past decade-plus, JPMC, along with certain of its subsidiaries, has held interests in FCC licensees with a history of compliance during the period of JPMC's involvement. For example, FCC records demonstrate that:

- Between 2012 and 2017, JPMC and certain of its subsidiaries held voting interests in the numerous broadcast stations licensed to subsidiaries of Tribune Media, Inc.[44]

- Between 2009 and 2012, a subsidiary of JPMC held a controlling interest in Open Range,[45] which held more than 500 FCC licenses. Open Range was a broadband wireless internet provider that was formed to provide service to unserved and underserved rural Americans.[46] Open Range filed for bankruptcy in 2011[47] and received the bankruptcy court's approval to complete a sale of its assets in January 2012.[48]

- Between 2003 and 2008, JPMC and certain of its subsidiaries held significant interests in various radio stations licensed to subsidiaries of Archway Broadcast Group, LLC, including four stations licensed to ABG Georgia, LLC (interests held from 2003 through 2008),[49] six

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[43] The following discussion does not necessarily include an exhaustive list of every FCC license-holder in which JPMC or its subsidiaries have ever held an interest.

[44] *See, e.g., Applications of Tribune Company and its Licensee Subsidiaries, Debtors in Possession, et al.*, 27 FCC Rcd 14239 (2012), and applications approved therein; *Applications of Local TV Holdings, LLC, Transferor and Tribune Broadcasting Company II, LLC, Transferee and Dreamcatcher Broadcasting, LLC, Transferee*, 28 FCC Rcd 16850 (2013), and applications approved therein.

[45] *See, e.g.*, FCC Form 602, Open Range Communications, Inc., File No. 0004096413 (Jan. 19, 2010).

[46] *See* Declaration of Chris Edwards, Chief Financial Officer of Open Range Communications Inc., In Support of the Debtors Chapter 11 Petition and First Day Motions, Case No. 11-13188-KJC, Doc. 2 (Bankr. D. Del. Oct. 6, 2011).

[47] *See* Voluntary Petition for Bankruptcy of Open Range Communications, Inc., Case No. 11-13188-KJC, Doc. 1 (Bankr. D. Del. Oct. 6, 2011).

[48] *See* Order (A) Authorizing the Debtor to Conduct an Auction for its Assets, (B) Approving Auction Procedures, (C) Authorizing the Debtor to Sell Assets to Successful Bidders at the Auction Free and Clear of All Liens, Claims, and Encumbrances Without Further Order of the Court and (D) Authorizing the Debtor to Consummate the Sales of the Assets Without Further Order of the Court, Case No. 11-13188-KJC, Doc. 415 (Bankr. D. Del. Dec. 22, 2011).

[49] *See, e.g.*, FCC File No. BALH-20021220ACT (granted Feb. 21, 2003, consummated Apr. 25, 2003); FCC File No. BALH-20021220ABU (granted Feb. 21, 2003, consummated Apr. 25, 2003); FCC File No. BALH-

stations licensed to ABG North Carolina, LLC (interests in all but one station were held from 2003 through 2007),[50] and three stations licensed to ABG Arkansas, LLC (interests held from 2003 through 2008).[51]

- Between 2003 and 2006, a subsidiary of JPMC held a significant interest in a radio station licensed to a subsidiary of Radiovisa Corporation.[52]

- Between 2002 and 2004, a subsidiary of JPMC held a 14.4% voting interest in Teligent, the holder of domestic and international 214 Authorizations and wireless licenses.[53]

- In addition, subsidiaries of JPMC hold various wireless authorizations, including industrial business pool (IG) and business radio (MG) licenses.[54]

In some of these cases, including Tribune and Teligent, JPMC acquired its interest in the FCC license-holder in connection with loans that JPMC had provided prior to the FCC license-holder's filing for bankruptcy protection. These holdings were therefore an outgrowth of JPMC's provision of much-needed financing to companies in the communications industry.

In the instances noted below, where a JPMC subsidiary has identified an issue with an FCC license in which it holds a controlling interest, the issue has been remedied promptly, consistent with Commission rules and practices. Specifically:

20021220AAL (granted Feb. 21, 2002, consummated Apr. 25, 2003); FCC File No. BOS-20030610AAU. These licenses were subsequently transferred to one or more entities in which JPMC had no direct or indirect interest. *See, e.g.*, FCC File No. BAL-20080806AAP (granted Oct. 1, 2008, consummated Nov. 7, 2008).

[50] *See, e.g.*, FCC File No. BALH-20021030ACE (granted Jan. 7, 2003, consummated Feb. 27, 2003); FCC File No. BALH-20020830ACW (granted Nov. 8, 2002, consummated Jan. 9, 2003); FCC File No. BOS-20030317LUL. These licenses were subsequently transferred to one or more entities in which JPMC had no direct or indirect interest. *See, e.g.*, FCC File No. BALH-20040524AOJ (granted Aug. 3, 2004, consummated Aug. 30, 2004); FCC File No. BALH-20070104ADC (granted Feb. 21, 2007, consummated Mar. 12, 2007); FCC File No. BALH-20070606AAO (granted July 23, 2007, consummated Aug. 23, 2007).

[51] *See, e.g.*, FCC File No. BALH-20021104AFY (granted Jan 7, 2003, consummated Jan. 22, 2003); FCC File No. BALH-20021104AFT (granted Jan. 7, 2003, consummated Jan. 22, 2003); FCC File No. BALH-20030218AAD (granted Apr. 10, 2003, consummated May 9, 2003); FCC File No. BOS-20030609ABA. These licenses were subsequently transferred to one or more entities in which JPMC had no direct or indirect interest. *See, e.g.*, FCC File No. BALH-20071015AIR (granted Nov. 28, 2007, consummated Feb. 1, 2008).

[52] *See, e.g.*, FCC File No. BAL-20030821ADR (granted Dec. 10, 2003, consummated Dec. 26, 2003); FCC File No. BOS-20040225AAX. The license was subsequently transferred to an entity in which JPMC had no direct or indirect interest. *See, e.g.*, FCC File No. BAL-20060213ACN (granted Apr. 5, 2006, consummated May 23, 2006).

[53] *See, e.g.*, FCC Form 602, Teligent, Inc., FCC File No. 002081162 (filed May 6, 2002); FCC File No. ITC-T/C-20020502-00230, WC Docket No. 02-103, FCC File Nos. 0000948563, 0000948603, 0000948657. These licenses were subsequently transferred to an entity in which JPMC had no direct or indirect interest. *See, e.g.*, Notice of Streamlined Domestic 214 Application Granted, WC Docket No. 04-148, DA 04-1649 (rel. June 14, 2004).

[54] *See, e.g.*, FCC File Nos. 0006561039, 0002371281, 0002451482, 0005612850, 0005959530, 0005959535, 0006281463.

- A JPMC subsidiary held a controlling interest in WestCom Holding Corp., which acquired control of KGM Circuit Solutions, LLC (the holder of an international Section 214 authorization) without prior Commission approval.[55] As explained in the application, the failure to seek such approval was inadvertent, and approval was sought as soon as practicable following the discovery of the omission. The Commission approved the transfer of control and did not take any enforcement action.[56]

- A subsidiary of JPMC received a citation for alleged violations of the Telephone Consumer Protection Act on July 2, 2007.[57]

- JPMC identified instances in which third party vendors, in connection with providing contracted services, filed applications for business radio licenses for a JPMC subsidiary that did not reflect the felony conviction. The two licenses in question were promptly returned to the Commission for cancellation.[58]

JPMC submits that, consistent with the breadth of its holdings, its long involvement in the U.S. communications market, and the nature and handling of these violations, the record, taken as a whole, supports a finding that JPMC has a history of compliance with the FCC's rules and policies.

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[55] *See* FCC File No. ITC-T/C-20070410-00139.

[56] A subsequent transfer of control to an entity in which JPMC had no direct or indirect interest was approved in May 2007. *See* FCC File No. ITC-T/C-20070410-00141.

[57] *See* FCC File No. EB-07-TC-3580.

[58] *See* FCC File Nos. 0008367553 (Cancellation of License, WQZE206), 0008366586 (Cancellation of License, WQZZ424).

EXHIBIT 1

Plea Agreement

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Criminal No.
v.	:	Filed:
JPMORGAN CHASE & CO.,	:	Violation: 15 U.S.C. § 1
Defendant.	:	

PLEA AGREEMENT

The United States of America and JPMorgan Chase & Co. ("defendant"), a financial services holding company organized and existing under the laws of Delaware, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands its rights:

(a) to be represented by an attorney;

(b) to be charged by Indictment;

(c) as a corporation organized and existing under the laws of Delaware, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United States to prosecute this case against it in the United States District Court for the District of Connecticut, and to contest venue in that District;

(d) to plead not guilty to any criminal charge brought against it;

(e) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;

(f) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(g) to appeal its conviction if it is found guilty; and

(h) to appeal the imposition of sentence against it.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the Recommended Sentence in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information to be filed in the United States District Court for the District of Connecticut. The Information will charge that the defendant and its co-conspirators entered into and engaged in a combination and

conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the euro/U.S. dollar ("EUR/USD") currency pair exchanged in the foreign currency exchange spot market ("FX Spot Market"), which began at least as early as December 2007 and continued until at least January 2013, by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The Information will further charge that the defendant knowingly joined and participated in the conspiracy from at least as early as July 2010 until at least January 2013.

3. The defendant will plead guilty to the criminal charge described in Paragraph 2 above pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the "Relevant Period" is that period from at least as early as December 2007 and continuing until at least January 2013.

(b) The FX Spot Market is a global market in which participants buy and sell currencies. In the FX Spot Market, currencies are traded against one another in pairs. The EUR/USD currency pair is the most traded currency pair by volume, with a worldwide trading volume that can exceed $500 billion per day, in a market involving the exchange of currencies valued at approximately $2 trillion a day during the Relevant Period.

(c) The FX Spot Market is an over-the-counter market and, as such, is decentralized and requires financial institutions to act as dealers willing to buy or sell a currency. Dealers, also known throughout the FX Spot Market as market makers, therefore play a critical role in ensuring the continued functioning of the market.

(d) During the Relevant Period, the defendant and certain of its Related Entities, as defined in Paragraph 14 of this Plea Agreement, employing approximately 250,000 individuals worldwide, acted as a dealer, in the United States and elsewhere, for currency traded in the FX Spot Market.

(e) A dealer in the FX Spot Market quotes prices at which the dealer stands ready to buy or sell the currency. These price quotes are expressed as units of a given currency, known as the "counter" currency, which would be required to purchase one unit of a "base" currency, which is often the U.S. dollar and so reflects an "exchange rate" between the currencies. Dealers generally provide price quotes to four decimal points, with the final digit known as a "percentage in point" or "pip." A dealer may provide price quotes to potential customers in the form of a "bid/ask spread," which represents the difference between the price at which the dealer is willing to buy the currency from the customer (the "bid") and the price at which the dealer is willing to sell the currency to the customer (the "ask"). A dealer may quote a spread, or may provide just the bid to a potential customer inquiring about selling currency or just the ask to a potential customer inquiring about buying currency.

(f) A customer wishing to trade currency may transact with a dealer by placing an order through the dealer's internal, proprietary electronic trading platform or

by contacting the dealer's salesperson to obtain a quote. When a customer accepts a dealer's quote, that dealer now bears the risk for any change in the currency's price that may occur before the dealer is able to trade with other dealers in the "interdealer market" to fill the order by buying the currency the dealer has agreed to sell to the customer, or by selling the currency the dealer has agreed to buy from the customer. A dealer may also take and execute orders from customers such as "fix orders," which are orders to trade at a subsequently determined "fix rate." When a dealer accepts a fix order from a customer, the dealer agrees to fill the order at a rate to be determined at a subsequent fix time based on trading in the interdealer market. Two such "fixes" used to determine a fix rate are the European Central Bank fix, which occurs each trading day at 2:15 PM (CET) and the World Markets/Reuters fix, which occurs each trading day at 4:00 PM (GMT).

(g) During the Relevant Period, the defendant and its corporate co-conspirators, which were also financial services firms acting as dealers in the FX Spot Market, entered into and engaged in a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX Spot Market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. The defendant, through one of its EUR/USD traders, participated in the conspiracy from at least as early as July 2010 and continuing until at least January 2013.

(h) In furtherance of the conspiracy, the defendant and its co-conspirators engaged in communications, including near daily conversations, some of which were in code, in an exclusive electronic chat room which chat room participants, as well as others

in the FX Spot Market, referred to as "The Cartel" or "The Mafia." Participation in this electronic chat room was limited to specific EUR/USD traders, each of whom was employed, at certain times, by a co-conspirator dealer in the FX Spot Market. The defendant participated in this electronic chat room through one of its EUR/USD traders from July 2010 until January 2013.

(i) The defendant and its co-conspirators carried out the conspiracy to eliminate competition in the purchase and sale of the EUR/USD currency pair by various means and methods including, in certain instances, by: (i) coordinating the trading of the EUR/USD currency pair in connection with European Central Bank and World Markets/Reuters benchmark currency "fixes" which occurred at 2:15 PM (CET) and 4:00 PM (GMT) each trading day; and (ii) refraining from certain trading behavior, by withholding bids and offers, when one conspirator held an open risk position, so that the price of the currency traded would not move in a direction adverse to the conspirator with an open risk position.

(j) During the Relevant Period, the defendant and its co-conspirators purchased and sold substantial quantities of the EUR/USD currency pair in a continuous and uninterrupted flow of interstate and U.S. import trade and commerce to customers and counterparties located in U.S. states other than the U.S. states or foreign countries in which the defendant agreed to purchase or sell these currencies. The business activities of the defendant and its co-conspirators in connection with the purchase and sale of the EUR/USD currency pair, were the subject of this conspiracy and were within the flow of, and substantially affected, interstate and U.S. import trade and commerce. The

conspiracy had a direct effect on trade and commerce within the United States, as well as on U.S. import trade and commerce, and was carried out, in part, within the United States.

(k) Acts in furtherance of the charged offense were carried out within the District of Connecticut and elsewhere.

ELEMENTS OF THE OFFENSE

5. The elements of the charged offense are that:

(a) the conspiracy described in the Information existed at or about the time alleged;

(b) the defendant knowingly became a member of the conspiracy; and

(c) the conspiracy described in the Information either substantially affected interstate and U.S. import commerce in goods or services or occurred within the flow of interstate and U.S. import commerce in goods and services.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

(a) $100 million (15 U.S.C. § 1);

(b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or

(c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

7. In addition, the defendant understands that:

(a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;

(b) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") or 18 U.S.C. § 3563(b)(2) or 3663(a)(3), the Court may order it to pay restitution to the victims of the offense charged; and

(c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a $400 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The parties agree there is no *ex post facto* issue under the November 1, 2014 Guidelines Manual. The Court must also consider the other factors set forth in 18 U.S.C. §§ 3553(a), 3572(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence

must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. §§ 3553(a), 3572(a).

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C) and subject to the full, truthful, and continuing cooperation of the defendant and its Related Entities, as defined in Paragraphs 14 and 15 of this Plea Agreement, the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of $550 million, pursuant to 18 U.S.C. § 3571(d), payable in full before the fifteenth (15th) day after the date of judgment, no order of restitution, and a term of probation of 3 years (the "Recommended Sentence"). The parties agree not to seek at the sentencing hearing any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the Recommended Sentence set forth in this Plea Agreement is reasonable.

(a) The defendant understands that the Court will order it to pay a $400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

(b) In light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the Recommended Sentence does not include a restitution order for the offense charged in the Information.

(c) The United States and the defendant agree that the Court shall order a term of probation, which should include at least the following conditions, the violation of which is subject to 18 U.S.C. § 3565:

(i) The defendant shall not commit another crime in violation of the federal laws of the United States or engage in the conduct set forth in Paragraph 4(g)-(i) above during the term of probation. On a date not later than that on which the defendant pleads guilty (currently scheduled for Wednesday, May 20, 2015), the defendant shall prominently post on its website a retrospective disclosure ("Disclosure Notice") of its conduct set forth in Paragraph 13 in the form agreed to by the Department (a copy of the Disclosure Notice is attached as Attachment B hereto), and shall maintain the Disclosure Notice on its website during the term of probation. The defendant shall make best efforts to send the Disclosure Notice not later than thirty (30) days after the defendant pleads guilty to its spot FX customers and counterparties, other than customers and counterparties who the defendant can establish solely engaged in buying or selling foreign currency through the defendant's consumer bank units and not the defendant's spot FX sales or trading staff.

(ii) The defendant shall notify the probation officer upon learning of the commencement of any federal criminal investigation in which the defendant is a target, or federal criminal prosecution against it.

(iii) The defendant shall implement and shall continue to implement a compliance program designed to prevent and detect the conduct set forth in Paragraph 4 (g)-(i) above and, absent appropriate disclosure, the conduct in Paragraph 13 below

throughout its operations including those of its affiliates and subsidiaries and provide an annual report to the probation officer and the United States on its progress in implementing the program, commencing on a schedule agreed to by the parties.

(iv) The defendant shall further strengthen its compliance and internal controls as required by the U.S. Commodity Futures Trading Commission, the United Kingdom Financial Conduct Authority, and any other regulatory or enforcement agencies that have addressed the conduct set forth in Paragraph 4 (g)-(i) above and Paragraph 13 below, and report to the probation officer and the United States, upon request, regarding its remediation and implementation of any compliance program and internal controls, policies, and procedures that relate to the conduct described in Paragraph 4 (g)-(i) above and Paragraph 13 below. Moreover, the defendant agrees that it has no objection to any regulatory agencies providing to the United States any information or reports generated by such agencies or by the defendant relating to conduct described in Paragraph 4 (g)-(i) above or Paragraph 13 below. Such information and reports will likely include proprietary, financial, confidential, and competitive business information, and public disclosure of the information and reports could discourage cooperation, impede pending or potential government investigations, and thus undermine the objective of the United States in obtaining such reports. For these reasons, among others, the information and reports and the contents thereof are intended to remain and shall remain nonpublic, except as otherwise agreed to by the parties in writing, or except to the extent that the United States determines in its sole discretion that disclosure would be in furtherance of

the United States' discharge of its duties and responsibilities or is otherwise required by law.

(v) The defendant understands that during the term of probation it shall: (1) report to the Antitrust Division all credible information regarding criminal violations of U.S. antitrust laws by the defendant or any of its employees as to which the defendant's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware; and (2) report to the Criminal Division, Fraud Section all credible information regarding criminal violations of U.S. law concerning fraud, including securities or commodities fraud by the defendant or any of its employees as to which the defendant's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware.

(vi) The defendant shall bring to the Antitrust Division's attention all federal criminal investigations in which the defendant is identified as a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal or state governmental authority in the United States against the defendant or its employees, to the extent that such investigations, proceedings or actions allege facts that could form the basis of a criminal violation of U.S. antitrust laws, and the defendant shall also bring to the Criminal Division, Fraud Section's attention all federal criminal or regulatory investigations in which the defendant is identified as a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal governmental authority in the United States against the defendant or its employees, to the

extent such investigations, proceedings or actions allege violations of U.S. law concerning fraud, including securities or commodities fraud.

(d) The parties agree that the term and conditions of probation imposed by the Court will not void this Plea Agreement.

(e) The defendant intends to file an application for a prohibited transaction exemption with the United States Department of Labor ("Department of Labor") requesting that the defendant, its subsidiaries, and affiliates be allowed to continue to be qualified as a Qualified Professional Asset Manager pursuant to Prohibited Transactions Exemption 84-14. The defendant will seek such exemption in an expeditious manner and will provide all information requested of it by the Department of Labor in a timely manner. The decision regarding whether or not to grant an exemption, temporary or otherwise, is committed to the Department of Labor, and the United States takes no position on whether or not an exemption should be granted; however, if requested, the United States will advise the Department of Labor of the fact, manner, and extent of the cooperation of the defendant and its Related Entities, as defined in Paragraphs 14 and 15 of this Plea Agreement, and the relevant facts regarding the charged conduct. If the Department of Labor denies the exemption, or takes any other action adverse to the defendant, the defendant may not withdraw its plea or otherwise be released from any of its obligations under this Plea Agreement. The United States agrees that it will support a motion or request by the defendant that sentencing in this matter be adjourned until the Department of Labor has issued a ruling on the defendant's request for an exemption, temporary or otherwise, so long as the defendant is proceeding with the Department of

Labor in an expeditious manner. To the extent that this Plea Agreement triggers other regulatory exclusions, disqualifications or penalties, the United States likewise agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such action, or any waiver or exemption therefrom, of the fact, manner, and extent of the cooperation of the defendant and its Related Entities and the relevant facts regarding the charged conduct as a matter for that agency to consider before determining what action, if any, to take.

(f) The United States contends that had this case gone to trial, the United States would have presented evidence to prove that the gain derived from or the loss resulting from the charged offense is sufficient to justify the Recommended Sentence set forth in Paragraph 9 of this Plea Agreement, pursuant to 18 U.S.C. § 3571(d). For purposes of this plea and sentencing only, the defendant waives its right to contest this calculation.

(g) The defendant agrees to waive its right to the issuance of a Presentence Investigation Report pursuant to Fed. R. Crim. P. 32 and the defendant and the United States agree that the information contained in this Plea Agreement and the Information may be sufficient to enable the Court to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, pursuant to Fed. R. Crim. P. 32(c)(1)(A)(ii). Except as set forth in this Plea Agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

10. The United States and the defendant agree that the applicable Guidelines fine range exceeds the fine contained in the Recommended Sentence set forth in Paragraph 9 of this

Plea Agreement. The parties agree that they will request the Court to impose the Recommended Sentence set forth in Paragraph 9 of this Plea Agreement in consideration of the Guidelines fine range and other factors set forth in 18 U.S.C. §§ 3553(a), 3572(a). Subject to the full, truthful and continuing cooperation of the defendant and its Related Entities, as defined in Paragraphs 14 and 15 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 8C4.1 for a downward departure from the Guidelines fine range because of the defendant's and its Related Entities' substantial assistance in the United States' investigation and prosecution of violations of federal criminal law in the FX Spot Market. The parties further agree that the Recommended Sentence is sufficient, but not greater than necessary to comply with the purposes set forth in 18 U.S.C. §§ 3553(a), 3572(a).

11. Subject to the full, truthful, and continuing cooperation of the defendant and its Related Entities, as defined in Paragraphs 14 and 15 of this Plea Agreement, and prior to sentencing in the case, the United States will fully advise the Court of the fact, manner, and extent of the defendant's and its Related Entities' cooperation, and their commitment to prospective cooperation with the United States' investigation and prosecutions of violations of federal criminal law in the FX Spot Market, all material facts relating to the defendant's involvement in the charged offense and all other relevant conduct.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject the Recommended Sentence provided for in Paragraph 9 of this Plea Agreement.

(a) If the Court does not accept the Recommended Sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 12(b) below, will be rendered void.

(b) If the Court does not accept the Recommended Sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement, or made in the course of plea discussions with an attorney for the United States, will not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Federal Rule of Evidence 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 16 of this Plea Agreement will be tolled for the period between the date of signature of this Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of signature of this Plea Agreement, whichever period is greater.

OTHER RELEVANT CONDUCT

13. In addition to its participation in a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX Spot Market, the defendant, through its currency traders and sales staff, also engaged in other currency trading and sales practices in conducting FX Spot Market transactions with customers via telephone, email, and/or electronic chat, to wit: (i) intentionally working

customers' limit orders one or more levels, or "pips," away from the price confirmed with the customer; (ii) including sales markup, through the use of live hand signals or undisclosed prior internal arrangements or communications, to prices given to customers that communicated with sales staff on open phone lines; (iii) accepting limit orders from customers and then informing those customers that their orders could not be filled, in whole or in part, when in fact the defendant was able to fill the order but decided not to do so because the defendant expected it would be more profitable not to do so; and (iv) disclosing non-public information regarding the identity and trading activity of the defendant's customers to other banks or other market participants, in order to generate revenue for the defendant at the expense of its customers.

DEFENDANT'S COOPERATION

14. The defendant and its Related Entities as defined below shall cooperate fully and truthfully with the United States in the investigation and prosecution of this matter, involving: (a) the purchase and sale of the EUR/USD currency pair, or any other currency pair, in the FX Spot Market, or any foreign exchange forward, foreign exchange option or other foreign exchange derivative, or other financial product (to the extent disclosed to the United States); (b) the conduct set forth in Paragraph 13 of this Plea Agreement; and (c) any investigation, litigation or other proceedings arising or resulting from such investigation to which the United States is a party. Such investigation and prosecution includes, but is not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such conduct or offenses in, an investigation and prosecution. The defendant's Related Entities for purposes of this Plea

Agreement are entities in which the defendant had, indirectly or directly, a greater than 50% ownership interest as of the date of signature of this Plea Agreement, including but not limited to JPMorgan Chase Bank N.A. The full, truthful, and continuing cooperation of the defendant and its Related Entities shall include, but not be limited to:

(a) producing to the United States all documents, factual information, and other materials, wherever located, not protected under the attorney-client privilege or work product doctrine, in the possession, custody, or control of the defendant or any of its Related Entities, that are requested by the United States; and

(b) using its best efforts to secure the full, truthful, and continuing cooperation of the current or former directors, officers and employees of the defendant and its Related Entities as may be requested by the United States, including making these persons available in the United States and at other mutually agreed-upon locations, at the defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings. This obligation includes, but is not limited to, sworn testimony before grand juries or in trials, as well as interviews with law enforcement and regulatory authorities. Cooperation under this paragraph shall include identification of witnesses who, to the knowledge of the defendant, may have material information regarding the matters under investigation.

15. For the duration of any term of probation ordered by the Court, the defendant also shall cooperate fully with the United States and any other law enforcement authority or government agency designated by the United States, in a manner consistent with applicable law and regulations, with regard to all investigations identified in Attachment A (filed under seal) to

this Plea Agreement. The defendant shall, to the extent consistent with the foregoing, truthfully disclose to the United States all factual information not protected by a valid claim of attorney-client privilege or work product doctrine protection with respect to the activities, that are the subject of the investigations identified in Attachment A, of the defendant and its Related Entities. This obligation of truthful disclosure includes the obligation of the defendant to provide to the United States, upon request, any non-privileged or non-protected document, record, or other tangible evidence about which the aforementioned authorities and agencies shall inquire of the defendant, subject to the direction of the United States.

GOVERNMENT'S AGREEMENT

16. Subject to the full, truthful, and continuing cooperation of the defendant and its Related Entities, as defined in Paragraphs 14 and 15 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the Recommended Sentence, the United States agrees that it will not bring further criminal charges, whether under Title 15 or Title 18, or other federal criminal statutes, against the defendant or any of its Related Entities:

(a) for any combination and conspiracy occurring before the date of signature of this Plea Agreement to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair, or any other currency pair exchanged in the FX Spot Market, or any foreign exchange forward, foreign exchange option or other foreign exchange derivative, or other financial product (to the extent such financial product was disclosed to the United States), and

(b) for the conduct specifically identified in Paragraph 13 of this Plea Agreement that the defendant disclosed to the United States and that occurred between January 1, 2009 and the date of signature of this Plea Agreement.

(c) The nonprosecution terms of Paragraph 16 of this Plea Agreement do not extend to any other product, activity, service or market of the defendant, and do not apply to (i) any acts of subornation of perjury (18 U.S.C. § 1622), making a false statement (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. § 1503, *et seq*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (ii) civil matters of any kind; (iii) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (iv) any crime of violence.

REPRESENTATION BY COUNSEL

17. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

18. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

19. The defendant agrees that, should the United States determine in good faith, during the period that any investigation or prosecution covered by Paragraph 14 is pending, or during the period covered by Paragraph 15, that the defendant or any of its Related Entities has failed to provide full, truthful, and continuing cooperation, as defined in Paragraphs 14 and 15 of this Plea Agreement respectively, or has otherwise violated any provision of this Plea Agreement, except for the conditions of probation set forth in Paragraphs 9(c)(i)-(vi), the violations of which are subject to 18 U.S.C. § 3565, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant and its Related Entities will be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant or its Related Entities for any offense referred to in Paragraph 16 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of signature of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

20. The defendant understands and agrees that in any further prosecution of it or its Related Entities resulting from the release of the United States from its obligations under this Plea Agreement, because of the defendant's or its Related Entities' violation of this Plea

Agreement, any documents, statements, information, testimony, or evidence provided by it, its Related Entities, or current or former directors, officers, or employees of it or its Related Entities to attorneys or agents of the United States, federal grand juries or courts, and any leads derived therefrom, may be used against it or its Related Entities. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Federal Rule of Evidence 410.

ENTIRETY OF AGREEMENT

21. This Plea Agreement, Attachment A, and Attachment B constitute the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States, the defendant and the defendant's counsel.

22. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

23. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

24. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

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AGREED:

FOR JPMORGAN CHASE & CO.

Date: 5/19/2015 By: _____
Stephen M. Cutler

Date: 5/19/2015 By: _____
John K. Carroll, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP

FOR THE DEPARTMENT OF JUSTICE, ANTITRUST DIVISION:

JEFFREY D. MARTINO
Chief, New York Office
Antitrust Division
United States Department of Justice

Date: _____ By: _____
Joseph Muoio, Trial Attorney
Eric L. Schleef, Trial Attorney
Bryan C. Bughman, Trial Attorney
Carrie A. Syme, Trial Attorney
George S. Baranko, Trial Attorney
Eric C. Hoffmann, Trial Attorney

FOR THE DEPARTMENT OF JUSTICE, CRIMINAL DIVISION, FRAUD SECTION:

ANDREW WEISSMANN
Chief, Fraud Section
Criminal Division
United States Department of Justice

Date: _____ By: _____
Daniel A. Braun, Deputy Chief
Benjamin D. Singer, Deputy Chief
Albert B. Stieglitz, Jr., Assistant Chief
Melissa T. Aoyagi, Trial Attorney

AGREED:

FOR JPMORGAN CHASE & CO.:

Date: _____ By: _____

Stephen M. Cutler, Esq.
Executive Vice President and General
Counsel, JPMorgan Chase & Co.

Date: _____ By: _____

John K. Carroll, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP

FOR THE DEPARTMENT OF JUSTICE, ANTITRUST DIVISION:

JEFFREY D. MARTINO
Chief, New York Office
Antitrust Division
United States Department of Justice

Date: 5/20/15 By: _____

Joseph Muoio, Trial Attorney
Eric L. Schleef, Trial Attorney
Bryan C. Bughman, Trial Attorney
Carrie A. Syme, Trial Attorney
George S. Baranko, Trial Attorney
Eric C. Hoffmann, Trial Attorney
Grace Pyun, Trial Attorney

FOR THE DEPARTMENT OF JUSTICE, CRIMINAL DIVISION, FRAUD SECTION:

ANDREW WEISSMANN
Chief, Fraud Section
Criminal Division
United States Department of Justice

Date: 5/20/15 By: _____

Daniel A. Braun, Deputy Chief
Benjamin D. Singer, Deputy Chief
Albert B. Stieglitz, Jr., Assistant Chief
Melissa T. Aoyagi, Trial Attorney

ATTACHMENT B

DISCLOSURE NOTICE

The purpose of this notice is to disclose certain practices of JPMorgan Chase & Co. and its affiliates (together, "JPMorgan Chase" or the "Firm") when it acted as a dealer, on a principal basis, in the spot foreign exchange ("FX") markets. We want to ensure that there are no ambiguities or misunderstandings regarding those practices.

To begin, conduct by certain individuals has fallen short of the Firm's expectations. The conduct underlying the criminal antitrust charge by the Department of Justice is unacceptable. Moreover, as described in our November 2014 settlement with the U.K. Financial Conduct Authority relating to our spot FX business, in certain instances during the period 2008 to 2013, certain employees intentionally disclosed information relating to the identity of clients or the nature of clients' activities to third parties in order to generate revenue for the Firm. This also was contrary to the Firm's policies, unacceptable, and wrong. The Firm does not tolerate such conduct and already has committed significant resources in strengthening its controls surrounding our FX business.

The Firm has engaged in other practices on occasion, including:

- We added markup to price quotes using hand signals and/or other internal arrangements or communications. Specifically, when obtaining price quotes for bids or offers from the Firm, certain clients requested to be placed on open telephone lines, meaning the client could hear pricing not only from a salesperson, but also from the trader who would be executing the client's order. In certain instances, certain of our salespeople used hand signals to indicate to the trader to add markup to the price being quoted to the client on the open telephone line, so as to avoid informing the client listening on the phone of the markup and/or the amount of the markup. For example, prior to agreement between the client and the Firm to transact for the purchase of €100, a salesperson would, in certain instances, indicate with hand signals that the trader should add two pips of markup in providing a specific price to the client (*e.g.*, a EURUSD rate of 1.1202, rather than 1.1200) in order to earn the Firm markup in connection with the prospective transaction.

- We have, without informing clients, worked limit orders at levels (i.e., prices) better than the limit order price so that we would earn a spread or markup in connection with our execution of such orders. This practice could have impacted clients in the following ways: (1) clients' limit orders would be filled at a time later than when the Firm could have obtained currency in the market at the limit orders' prices, and (2) clients' limit orders would not be filled at all, even though the Firm had or could have obtained currency in the market at the limit orders' prices. For example, if we accepted an order to purchase €100 at a limit of 1.1200 EURUSD, we might choose to try to purchase the currency at a EURUSD rate of 1.1199 or better so that, when we sought in turn to fill the client's order at the order price (i.e., 1.1200), we would make a spread or markup of 1 pip or better on the transaction. If the Firm were unable to obtain the currency at the 1.1199 price, the clients' order may not be filled as a result of our choice to make this spread or markup.

- We made decisions not to fill clients' limit orders at all, or to fill them only in part, in order to profit from a spread or markup in connection with our execution of such orders. For example, if we accepted a limit order to purchase €100 at a EURUSD rate of 1.1200, we would in certain instances only partially fill the order (*e.g.*, €70) even when we had obtained (or might have been able to obtain) the full €100 at a EURUSD rate of 1.1200 or better in the marketplace. We did so because of other anticipated client demand, liquidity, a decision by the Firm to keep inventory at a more advantageous price to the Firm, or for other reasons. In doing so, we did not inform our clients as to our reasons for not filling the entirety of their orders.

JPMorgan Chase & Co.

Secretary's Certificate of Corporate Resolution

I, Anthony J. Horan, Corporate Secretary of JPMorgan Chase & Co. ("JPMC"), hereby certify that the following resolutions were adopted at a meeting of the Board of Directors of JPMC, on May 19, 2015, which meeting was duly called and at which a quorum was present, and that such resolutions remain in force as of the date hereof:

WHEREAS, the Board of Directors of JPMorgan Chase & Co. ("JPMC"), having considered:

The discussions between JPMC, through its legal counsel, and the United States Department of Justice, Criminal Division, Fraud Section, and the Antitrust Division regarding its investigation into potential criminal violations relating to foreign exchange spot trading;

The proposed Information and a Plea Agreement, with attachments, as circulated to the board on May 18, 2015; and

The advice to the Board from its legal counsel regarding the Information and the terms of the Plea Agreement, as well as the advice regarding the waiver of rights and other consequences of signing the Plea Agreement.

After discussion, on motion duly made, the following resolution was adopted:

RESOLVED: That the Board of Directors has been advised of the contents of the Information and the proposed Plea Agreement and its attachments in the matter of the United States versus JPMC and voted to authorize entry into the proposed Plea Agreement and to authorize JPMC to plead guilty to the charge specified in the Information; and that Stephen M. Cutler, Executive Vice President and General Counsel or any other executive officer of JPMC, or an appropriate designee, is hereby authorized (i) to execute the Plea Agreement on behalf of JPMC, with such modifications as he may approve, (ii) to act and speak on behalf of JPMC, in any proceeding or as otherwise necessary for the purpose of executing the Plea Agreement, including entry of a guilty plea on behalf of JPMC, (iii) to take further action necessary to carry into effect the intent and purpose of this written resolution, and (iv) to provide to the United States Department of Justice a certified copy of this written resolution.

Anthony J. Horan
May 19, 2015

EXHIBIT 2

Sentencing Memorandum and Motion for Departure

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	No.: 3:15-cr-00079 (SRU)
JPMORGAN CHASE & CO.,	:	December 1, 2016
Defendant.	:	

UNITED STATES' SENTENCING MEMORANDUM AND MOTION FOR DEPARTURE

The United States respectfully submits this memorandum in aid of sentencing and in support of the Plea Agreement entered into between the United States and JPMorgan Chase & Co. (the "Defendant"), a global financial services company. On May 20, 2015, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the Defendant waived indictment and pleaded guilty to a one-count information charging it with violating Section 1 of the Sherman Act, 15 U.S.C. § 1. Sentencing in this matter is scheduled for December 15, 2016.

The United States and the Defendant agree that a criminal fine in the amount of $550 million, a period of probation of 3 years, no order of restitution, and a $400 special assessment, is a sentence sufficient but not greater than necessary to comply with the purposes set forth in 18 U.S.C. §§ 3553(a), 3572(a). The Probation Office has also stated in its evaluation that the proposed sentence meets these purposes. *See* Presentence Report (November 16, 2016) ¶ 87. The Defendant has cooperated extensively with the investigation giving rise to this matter. For the reasons set forth below, the United States respectfully moves for a downward departure from

the Defendant's Sentencing Guidelines fine under U.S.S.G. § 8C4.1 and requests that the Court accept the Defendant's guilty plea and sentence the Defendant in accordance with the Plea Agreement between the United States and the Defendant, which was previously filed with the Court.

I. Summary of the Offense

The Defendant entered into and engaged in a conspiracy, which began at least as early as December 2007 and continued until at least January 2013, to fix, stabilize, maintain, increase and decrease the price of, and rig bids and offers for, the euro/U.S dollar ("EUR/USD") currency pair exchanged in the foreign currency exchange spot market ("FX Spot Market"), by agreeing with its co-conspirators to eliminate competition in the purchase and sale of the EUR/USD currency pair. The Defendant participated in this conspiracy through a EUR/USD trader, who communicated on a near-daily basis with traders employed by the Defendant's co-conspirators in an electronic chat room known by some in the FX Spot Market as "the Cartel" or "the Mafia" (the "Cartel Chat"). The Defendant employed a trader who participated in the Cartel Chat from July 2010 until January 2013.

The conspiracy charged in the Information affected the price of the EUR/USD currency pair, which is the most heavily traded currency pair in the FX Spot Market. This market is a global, over-the-counter market, which operates 24 hours a day during the business week, in which currencies are exchanged for one another. Each currency has a price, which can change continuously throughout the day, often on a second-by-second basis.

The Defendant and its co-conspirators are "dealers" in the FX Spot Market. Dealers are crucial to the market, providing two key functions: they quote prices to potential customers and, if the customer accepts the dealer's quote, the dealer agrees to sell currency to, or buy currency

from, the customer. A dealer's customers can include corporations, asset managers, or other entities requiring foreign exchange. Dealers also trade with one another in a segment of the market known as the "interdealer" market, which is akin to a wholesale market where a dealer can go to find the currency it needs to fill customer orders, among other things. A dealer bears the risk of price changes in the market, but can profit off of the trades it makes.

There is no "closing price" of a currency. Therefore, in order to provide a reference for a currency's price, "fixes" are calculated at certain times of the day. Fixes provide a price snapshot at a specific time. The fix rate is published and disseminated throughout the market and used as a price benchmark, as well as in pricing certain financial products. There are two fixes for the EUR/USD currency pair primarily at issue in this matter: the 1:15 PM (London time) European Central Bank fix ("ECB fix") and the 4:00 PM (London time) World Markets/Reuters fix ("WMR fix"). As a dealer, the Defendant executes currency trades during these fixing times. These trades contribute to the calculation of the fix rate.

Acting through certain traders who participated in the Cartel Chat, the Defendant and its co-conspirators agreed not to compete with one another at certain ECB and WMR fixes. Such conduct was central to the charged conspiracy and, as discussed below, the calculation of the fine agreed to by the parties. The conspirators carried out this agreement by, among other things, coordinating their trading strategies at certain fixes. This coordination, at times, allowed the conspirators to attempt to move the fix price up or down, in order to potentially benefit their trading position. Such conduct, however, could have impacted certain customers of the conspirators, by potentially causing certain customers to pay for currency at a price which could have been lower, or sell currency at a price which could have been higher, absent the conspiracy.

As set forth in the Plea Agreement, the Defendant also engaged in other currency trading

and sales practices in conducting FX Spot Market transactions with customers via telephone, email and/or electronic chat. Such relevant conduct related to how the Defendant handled certain limit orders, how the Defendant at times applied sales markup, and the disclosure of certain non-public information. *See* Plea Agreement ¶ 13.

II. Legal Standard

Rule 11(c)(1)(C) authorizes the United States to enter into plea agreements with parties in which the parties agree that a particular sentence is the appropriate disposition of the case. *See* Fed. R. Crim. P. 11(c)(1)(C). The Court, however, "retains absolute discretion whether to accept a plea agreement." Fed. R. Crim. P. 11, Advisory Committee notes to 1999 amendments. As a plurality of the Supreme Court has observed:

> Federal sentencing law requires the district judge in every case to impose a sentence sufficient, but not greater than necessary, to comply with the purposes of federal sentencing, in light of the Guidelines and other [18 U.S.C.] § 3553(a) factors. The Guidelines provide a framework or starting point – a basis, in the commonsense meaning of the term – for the judge's exercise of discretion. Rule 11(c)(1)(C) permits the defendant and the prosecutor to agree that a specific sentence is appropriate, but the agreement does not discharge the district court's independent obligation to exercise its discretion.

Freeman v. United States, 131 S. Ct. 2685, 2692 (2011) (plurality opinion) (internal citations and quotation marks omitted). In exercising that discretion, while the district court may accept or reject the proposed Rule 11(c)(1)(C) plea agreement, it may not modify the agreement's terms. *Id; United States v. Green,* 595 F.3d 432, 438 (2d Cir. 2010) (citing *United States v. Cunavelis*, 969 F.2d 1419, 1422 (2d Cir. 1992)).

III. Sentencing Guidelines

Due to the size of the FX Spot Market, a key consideration in calculating the fine involves the procedure required when the guidelines fine is greater than the statutory maximum fine for the charged offense. As discussed below, the following provisions are relevant to the

fine calculation here: 1) the instructions for calculating a fine under Chapters Eight and Two of the Sentencing Guidelines; 2) the statutory maximum fine for the offense under 15 U.S.C. § 1 and 18 U.S.C. § 3571 (c) and (d); and 3) the instructions in U.S.S.G. § 8C3.1(b) pertaining to instances where the minimum guidelines fine is greater than the statutory maximum fine.

Organizations, such as the Defendant, are sentenced pursuant to Chapter 8 of the Sentencing Guidelines. In the case of antitrust violations, in addition to the provisions of Chapter 8, special instructions with respect to determining fines for organizations are applicable pursuant to U.S.S.G. § 8C2.4(b). The relevant special instruction states that for organizations "in lieu of pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use 20 percent of the affected volume of commerce." U.S.S.G. § 2R1.1(d)(1). After calculating the base fine, the organization's culpability score is determined pursuant to U.S.S.G. § 8C2.5, which is used to select the minimum and maximum fine multipliers that are then used to determine the applicable fine range. *See* U.S.S.G. § 8C2.6. In the case of antitrust violations, however, the special instructions applicable to fines for organizations state that neither the minimum nor maximum multiplier shall be less than 0.75. U.S.S.G. § 2R1.1(d)(2).

In determining the volume of commerce affected by the conspiracy, the United States focused on conduct by the Defendant involving the ECB and WMR fixes. Such conduct had significant anti-competitive effects in the market. It also provided some of the most complete and accessible trade data, allowing for a fair and expeditious resolution to this matter. A review of the Defendant's total volume of transactions at ECB and WMR fixes during the conspiratorial period, prorated by 50%, so that the Defendant and its co-conspirators are not held accountable for their collective losses, and prorated further to account for the years in which the Defendant was active in the conspiracy, yields a volume of affected commerce of $1.41 trillion. Thus,

using 20% of the volume of affected commerce under U.S.S.G. § 2R1.1(d)(1) would result in a base fine of $282 billion that exceeds the maximum statutory penalty of $100 million, even when using a minimum multiplier of 0.75. Pursuant to U.S.S.G. §§ 8C3.1(b), when the minimum guideline fine is greater than the maximum fine authorized by statute, the maximum fine authorized by statute shall be the guideline fine. While the Sherman Act only authorizes a fine for corporations up to $100 million, 15 U.S.C. § 1, the alternative fine provision nonetheless authorizes a fine equal to twice the gain derived from the offense or twice the loss caused to the victims, if any person derives pecuniary gain from the offense or if the offense results in pecuniary loss to a person other than the defendant, 18 U.S.C. § 3571(c)-(d), which is the case here.

The United States used the loss associated with the conspiracy to calculate the proposed fine in this matter pursuant to U.S.S.G § 2R1.1 cmt. n. 3 which states: "[t]he loss from price-fixing exceeds the gain because, among other things, injury is inflicted upon consumers who are unable or for other reasons do not buy the product at the higher prices." In order to determine pecuniary loss, the United States analyzed the effect the Defendant and its co-conspirators had on the EUR/USD price for a selection of ECB and WMR fixes. Using price data provided by the Defendant and its co-conspirators, the United States analyzed how the EUR/USD price changed for ECB and WMR fixes during the time period between 2009 and 2012, the years for which data was available. This analysis measured price changes over windows of 30 seconds, 60 seconds and 120 seconds. The United States observed a range of price changes, with the mean and median effects varying each year. Given this, the United States concluded that a price movement of approximately .03% of a USD cent was reasonable to use in order to determine the gross pecuniary loss associated with the conspiracy.

Given the .03% estimate, the loss resulting from Defendant's conduct was determined to be $423 million. The Defendant does not contest this calculation for the purposes of this sentencing. *See* Plea Agreement ¶ 9(f). Doubling the $423 million loss yields a statutory maximum fine of $846 million. 18 U.S.C. § 3571(c)-(d). Since $846 million is the maximum fine authorized by statute, $846 million becomes the Guideline fine pursuant to U.S.S.G. §§ 8C3.1(b).

IV. Statutory Factors to Consider at Sentencing

In addition to considering the Guidelines in effect on the day of sentencing, the Court must also consider the factors set forth in 18 U.S.C. §§ 3553(a) and 3572 in determining and imposing a sentence that is "sufficient but not greater than necessary" to meet specified sentencing goals. The most relevant factors include: 1) the history and characteristics of the Defendant and the nature and circumstances of the offense (18 U.S.C. § 3553 (a)(1)); 2) the need for the sentence imposed to reflect the seriousness of the misconduct, to promote respect for law, to provide adequate deterrence, and to protect the public from other crimes of the Defendant (18 U.S.C. § 3553 (a)(2)(A – C)); and 3) the Defendant's measures to discipline employees involved in the offense (18 U.S.C. § 3572(a)(8). The United States submits that the proposed sentence contained in the Plea Agreement is sufficient, but not greater than necessary, to achieve these objectives.

1. History and Characteristics of the Defendant and the Nature and Circumstances of the Offense (18 U.S.C. § 3553(a)(1))

The Defendant is a financial services company with offices and branches worldwide, and with over 240,000 employees. The charged offense affected an important market in the global economy, continuing for a number of years undetected. By agreeing not to compete with each other, the Defendant and its co-conspirators, at times, increased the likelihood that they would